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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

COUNTY OF SAN BERNARDINO,

Plaintiff and Appellant,

v.

GORDON S. LEMOINE et al.,

Defendants and Respondents.

E047880

(Super.Ct.No. CIVSS706498)

OPINION

APPEAL from the Superior Court of San Bernardino County. Paul M. Bryant, Jr., Judge. Affirmed.

Ruth E. Stringer, County Counsel, and Paul St. John, Deputy County Counsel, for Plaintiff and Appellant.

Ronald D. Steinbach for Defendants and Respondents.

McCann & Carroll and C. Daniel Carroll for Global Discoveries, Ltd. as Amicus Curiae on behalf of Plaintiff and Appellant.

The County of San Bernardino Tax Collector (County) appeals from a judgment in a declaratory relief action, filed to determine the legitimacy of the claim by respondents

Gordon Lemoine, Henry Wyle and Hilda Wyle, Trustees of the Wyle Family Trust (collectively referred to herein as Lemoine and WFT), for excess proceeds from a tax collector's sale of real property formerly owned by Ronald Stone. The trial court found that Lemoine and WFT were "parties of interest" because they acquired their interest in the parcels and recorded the deeds prior to the recording of the tax collector's deed. The court entered judgment entitling Lemoine and WFT to the excess proceeds from the tax collector's sale.

The County contends Lemoine and WFT were not "parties of interest" because the deeds transferring Stone's interest to them were not recorded prior to the tax collector's sale. We affirm.

BACKGROUND

Because the trial was conducted by submitting on the trial briefs, we refer to the facts set forth in the complaint and the trial briefs for background.

Ronald Stone owned five parcels of land in San Bernardino County, including two parcels that are the subject of this action, lots 11 and 14. On July 1, 2005, Stone's lots became subject to tax sale for delinquent unpaid real property taxes, and the deadline to redeem the lots was 5:00 p.m. on May 12, 2006.¹ The property tax sale was conducted from May 15, 2006, through May 19, 2006.

¹ In paragraph 10, the complaint alleges that deadline for redemption was May 12, 2006, as the tax sale was set to begin on March 15. However, elsewhere the complaint alleges that the tax sale was scheduled to commence on May 15, so we assume this was a typographical error.

On May 12, 2006, Stone signed a “Purchase Agreement” in which he agreed to sell all five of his parcels to Lemoine and WFT for \$5,000, with the provision that taxes and penalties were to be paid by the buyers. Lemoine and WFT paid the taxes on three of the five parcels, but did not pay the taxes for lots 11 and 14. At the tax sale which took place on May 15, 2006, through May 19, 2006, lots 11 and 14 were sold for unpaid taxes.

On June 19, 2006, Lemoine and WFT recorded the grant deeds transferring title to all five parcels from Stone to them. On July 26, 2006, the County recorded the Tax Deed transferring title to lots 11 and 14 to the purchasers at the tax sale. Lemoine and WFT submitted a claim for excess proceeds resulting from the County’s sale of the two parcels. The County filed a complaint for declaratory relief to determine its rights and duties respecting the excess proceeds received from the tax sale of the property.

At the court trial scheduled on May 5, 2008, the parties submitted the matter for decision based on trial briefs. On May 19, 2008, the trial court issued its intended decision, concluding that Lemoine and WFT were entitled to the excess proceeds because they acquired their interest prior to the tax sale and recorded their deed prior to the recording of the tax deed. Accordingly, judgment in their favor was filed on June 3, 2008. The County timely appealed.

DISCUSSION

The County argues that the trial court erred in awarding excess proceeds from the tax sale to Lemoine and WFT because they were not “parties of interest,” within the

meaning of Revenue and Taxation Code² section 4675. The County bases this contention on the fact that the deed transferring Stone's interest to Lemoine and WFT was not executed prior to the tax sale. We disagree.³

When a delinquent tax payer's property is sold for back taxes, taxes and assessments are paid first, and the excess, if any, is paid into a trust fund. (§§ 4672.1, 4673.1, 4674; *Marion Drive, LLC v. Saladino* (2006) 136 Cal.App.4th 1432, 1436-1437.) Thereafter, section 4675, subdivision (a), provides: "Any party of interest in the property may file with the county a claim for the excess proceeds, in proportion to his or her interest held with others of equal priority in the property at the time of sale, at any time prior to the expiration of one year following the recordation of the tax collector's deed to the purchaser." Following the recordation of the tax collector's deed to the purchaser, and if the excess proceeds have been claimed by any party of interest, the excess proceeds must be distributed, in order of priority, to (1) lienholders of record prior to the recordation of the tax deed to the purchaser in the order of their priority, and (2) any person with title of record to all or any portion of the property prior to the recordation of the tax deed to the purchaser. (§ 4675, subd. (e)(1), (2).)

² All further statutory references are to the Revenue and Taxation Code, unless otherwise stated.

³ Global Discoveries, LTD. submitted an amicus curiae brief in support of appellant. Respondents' answer to the amicus curiae brief includes several attachments, which do not conform to rule 8.204(d) of the California Rules of Court. The attachments are hereby stricken.

The determination of whether Lemoine and WFT are “parties of interest” within the meaning of section 4675 is a matter of statutory interpretation; the interpretation of statutory language is a question of law that we decide de novo, independent of the trial court’s ruling or reasoning. (*Bank of America v. Giant Inland Empire R.V. Ctr.* (2000) 78 Cal.App.4th 1267, 1276 [4th Dist. Ct. of Appeal, Div. 2].). We begin by looking at the words of the statute, giving them their usual and ordinary meaning. (*Northwest Energetic Services, LLC v. California Franchise Tax Bd.* (2008) 159 Cal.App.4th 841, 854.)

“Parties of interest” and their order of priority are described in section 4675, subdivision (e). Since the present case does not involve lienholders (§ 4675, subd. (e)(1)), we focus on subparagraph (2), referring to persons “with title of record to all or any portion of the property prior to the recordation of the tax deed to the purchaser.” The plain meaning of the words of that subsection provides that a person with “title of record . . . prior to the recordation of the tax deed to the purchaser” is a party of interest. (§ 4675, subd. (e)(2).) The parties’ rights to the excess proceeds are created at the moment when the tax-delinquent property is sold by the governmental entity for an amount greater than the assessments on the property, and the excess proceeds come into existence. (*First Corp. v. County of Santa Clara* (1983) 146 Cal.App.3d 841, 845.)

One need not “own” the property before the sale, since post-sale assignments of the right to claim the excess proceeds are recognized as conferring the status of “parties of interest” upon the assignees. (See *Mission Valley East, Inc. v. County of Kern* (1981) 120 Cal.App.3d 89, 95 [rejecting the county’s claim that only those parties who own the property before the sale and not their successors in interest may claim the excess

proceeds].) Indeed, the 1978 amendment of section 4675 specifically addresses postsale assignments. (*Ibid.*; § 4675, subd. (b).) The 1985 amendment limited “parties of interest” to holders of title of record. (*Azadozy v. Nikoghosian* (2005) 128 Cal.App.4th 1369, 1374.) Section 4675 does not preclude a postsale assignee from claiming excess proceeds. (*Mission Valley East, Inc. v. County of Kern, supra*, 120 Cal.App.3d at p. 96.) It simply means the grantee must record title prior to the recordation of the tax sale deed.

In arguing that the statute requires a person to both hold an interest in the property at the time of the sale and hold title of record prior to the recordation of the tax deed, the County relies on the language of subdivision (a) of section 4675, providing that any party of interest may file a claim for excess proceeds in proportion to his or her interest at the time of the sale. However, section 4675, subdivision (a) does not define “interested parties.” It merely sets forth the class of persons who may make claims for excess proceeds and the manner of distributing the proceeds where there are multiple parties of interest. (§ 4675, subd. (a).) The definition of “party of interest” is found in subdivision (e) of section 4675, which provides, in part, that a “party of interest” is one who records title prior to the recordation of title by the purchaser at the tax sale.

The County acknowledges that Lemoine and WFT recorded their deeds to the two parcels before the tax sale purchaser recorded the deed from the tax sale. It contends, however, that the deed had to be recorded prior to the tax sale in order to confer upon Lemoine and WFT the status of “parties of interest.” To reach this conclusion, however, we would have to ignore the plain language of section 4675, subdivision (e)(2). The statutory language refers to “any person with title of record to all or any portion of the

property **prior to the recordation of the tax deed to the purchaser.**” [Bold added.]

(§ 4675, subd. (e)(2).) The statute does not require the person to have title of record prior to the tax sale. Any other interpretation would make the provisions of section 4675, subdivision (b), relating to post-sale assignments, mere surplusage. A construction rendering some words in a statute useless or redundant is to be avoided. (*Playboy Enterprises, Inc. v. Superior Court* (1984) 154 Cal.App.3d 14, 20-21; see also *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1118.)

Lemoine and WFT purchased their interests prior to the tax sale and recorded their deeds prior to the recordation of the tax deed to the purchase at the tax sale. The trial court correctly determined they were entitled to excess proceeds from the tax sale.

DISPOSITION

The judgment is affirmed. Respondents are entitled to recover costs on appeal.

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s/Ramirez
P.J.

We concur:

s/Hollenhorst
J.

s/Miller
J.